

**Wittels  
McInturff  
Palikovic**

April 18, 2024

**Via ECF**

The Honorable Allyne R. Ross  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: Mirkin, et al. v. XOOM Energy, LLC, et al., No. 18 Civ. 2949 (ARR) (JAM)**

Dear Judge Ross,

On behalf of Plaintiff and the Class, we write to respond briefly to XOOM's most recent letter-motion, ECF No. 206. XOOM refused to allow Class Counsel to insert Plaintiff's position in its letter, which violates Your Honor's Individual Practice I.E. Plaintiff's position is as follows:

XOOM's grounds for the requested extension is its purported need to review Plaintiff's amended expert report before XOOM files its reply on the decertification motion. But this is a problem of XOOM's own making. XOOM proceeded with its decertification motion prematurely—just weeks after XOOM produced voluminous records obviously bearing on the damages calculations and before filing its anticipated motion to exclude Plaintiff's experts, upon which XOOM says its decertification motion is predicated. XOOM's own bizarre procedural tactics hardly warrant a change in the schedule the Court recently set.

Furthermore, Plaintiff's opposition to XOOM's motion was filed April 5. The Court previously denied a request to extend XOOM's reply deadline to May 3. *See* ECF No. 184 (requesting May 3 deadline); Mar. 27, 2024 Text Order (setting April 26 deadline instead). Nothing has changed to warrant reconsideration of that Order.

Finally, XOOM admits that it is seeking the extension so that it may assert new arguments on reply. ECF No. 206 at 2. This is improper under the rules. If XOOM raises new arguments, Plaintiff should be allowed to submit a sur-reply to address those new arguments.

Thank you for the Court's attention to this matter.

Respectfully Submitted

/s/ Ethan D. Roman  
Ethan D. Roman

*Class Counsel for Plaintiff and the  
Class*

cc: All Counsel of Record (*via ECF*)